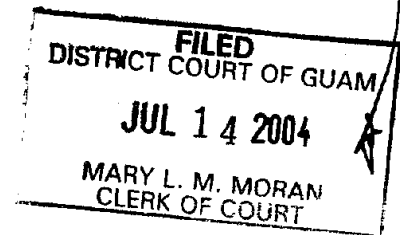


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17 IN THE UNITED STATES DISTRICT COURT
18 DISTRICT OF GUAM

19 THE GOVERNMENT OF GUAM, by and
20 through the ATTORNEY GENERAL OF
21 GUAM

22 Plaintiff,

23 vs.

24 FELIX P. CAMACHO, in his official capacity
25 as Governor of Guam,

26 Defendant.

Civil Case No. 04-00035

27 **OBJECTION TO SUGGESTION OF**
28 **REFERRAL TO UNITED STATES**
MAGISTRATE JUDGE

29 Governor Felix P. Camacho respectfully objects to the Attorney General's suggestion
30 that the Plaintiff's *ex parte* application for a temporary restraining order be referred to United States
31 Magistrate Judge Joaquin Manibusan. There is no statutory basis or local rule allowing the Attorney
32 General to make such a suggestion. *See* 28 U.S.C. §636; General Order of the District Court of Guam
33 No. 04-00016. In addition, in the event the *ex parte* application for a temporary restraining order is
34 referred to Magistrate Judge Manibusan by the designated District Judge, Magistrate Judge Manibusan
35 may have to disqualify himself from considering Plaintiff's temporary restraining order application.
36 Title 28 U.S.C § 455 provides in part:

1 (a) Any justice, judge, or magistrate judge of the United States shall disqualify himself
2 in any proceeding in which his impartiality might reasonably be questioned.

3 (b) He shall also disqualify himself in the following circumstances:

4 (1) Where he has a personal bias or prejudice concerning a party, or
5 personal knowledge of disputed evidentiary facts concerning the
6 proceeding;

7 * * * *

8 (3) Where he has served in governmental employment and in such
9 capacity participated as counsel, adviser or material witness concerning
10 the proceeding or expressed an opinion concerning the merits of the
11 particular case in controversy;

12 On July 13, 2004, the Attorney General of Guam filed the above-captioned case seeking
13 a permanent injunction and in addition, has filed an *ex parte* motion for a temporary restraining order
14 and a preliminary injunction. In addition, the Attorney General has requested that this matter be
15 referred to the Magistrate Judge pursuant to 28 U.S.C. § 636. However, in this particular instance, this
16 matter should not be referred to Magistrate Judge Manibusan as grounds appear to exist to disqualify
17 him from considering any part of the above-captioned case based upon the standards outlined in
18 28 U.S.C. § 455.

19 In his complaint, the Attorney General has sued the Governor of Guam, requesting *inter*
20 *alia* a declaratory judgment from the Court that the Governor lacks the capacity to appoint a special
21 prosecutor. The question of the Governor's ability to appoint a special prosecutor has current relevance
22 in a criminal case pending before the Superior Court of Guam, *People v. Moylan*, Superior Court of
23 Guam Case No. CM864-03. (See the July 14, 2004 Declaration of Louie J. Yanza filed herewith
24 ("Yanza Decl.")). In that case, the Governor appointed a special prosecutor (see Exhibit "A" to the
25 Yanza Decl.); thus, a decision by this Court is likely to impact the proceedings in that case.
26 Additionally, Magistrate Judge Manibusan has been listed as a potential witness for the defendant, the
27 Attorney General albeit in his individual capacity. (See Exhibit "B" to the Yanza Decl.)

28 Under the standards governing a judge's participation in a case, the Court must seek to
avoid the appearance of impropriety. Under 28 U.S.C. §455(a), Magistrate Judge Manibusan should
refrain from ruling in the above-captioned case so as to avoid impacting, or even the appearance of

1 impacting, the Superior Court case in which he has been listed as a witness, as this might potentially
2 raise questions as to his ability to be impartial. Under 28 U.S.C. § 455(b)(1) - (3), his participation as
3 a material witness in the Superior Court case also provides a basis for his disqualification.

4 Moreover, the issue of Magistrate Judge Manibusan's disqualification was raised in
5 *People v. Moylan* and apparently resolved in favor of him disqualifying himself. In that case, the
6 government of Guam, through Special Prosecutor Louie J. Yanza, requested that then-Superior Court
7 Judge Manibusan recuse himself from hearing the Superior Court case on the basis that Judge
8 Manibusan: (1) was a witness, (2) presided over the defendant's first divorce proceedings, (3) presided
9 over the defendant's current (now concluded) divorce proceedings, and (4) issued an order in the
10 defendant's current (now concluded) divorce proceedings that was criticized by the United States
11 Attorney. (See Exhibit "D" to the Yanza Decl.) It appears that Judge Manibusan found those grounds
12 to be an adequate basis to recuse himself (See the Yanza Decl.) The Superior Court case has not yet
13 gone to trial. Thus, to the extent that those grounds may have formed a basis for Judge Manibusan's
14 recusal in *People v. Moylan*, they remain equally relevant in this proceeding. In addition, Judge
15 Manibusan's apparent earlier recusal at the request of the Special Prosecutor appointed by the Governor
16 makes Magistrate Judge Manibusan's impartiality in the current case even more susceptible to question
17 since rather than questioning the Special Prosecutor's authority, Judge Manibusan's apparent response
18 in recusing himself may be seen as an acknowledgment and confirmation of the Special Prosecutor's
19 authority to prosecute the Superior Court case.

20 Dated this 14th day of July, 2004.

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